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6 Attorneys for Defendant,
7 CARSON CITY DEPUTY SHERIFF
8 HARRY W. WHEELER

9 **UNITED STATES DISTRICT COURT**

10 **DISTRICT OF NEVADA**

11 JSB, a minor, by his parents and natural
12 guardians MARINA DIAZ and JOSE DIAZ,

13 Plaintiffs,

14 vs.

15 CARSON CITY SHERIFF HARRY W.
16 WHEELER,

17 Defendants.

CASE NO. 3:14-cv-00436

ANSWER TO COMPLAINT

JURY DEMAND

18 COMES NOW Defendant, HARRY W. WHEELER, by and through his attorneys of
19 record, Thorndal Armstrong Delk Balkenbush & Eisinger, and in answer to Plaintiffs'
20 Complaint, hereby admits, denies, and alleges as follows:

21 **FIRST DEFENSE**

- 22 1. Defendant denies the allegations contained in Paragraph 1 of Plaintiffs' Complaint.

23 **Jurisdiction and Venue**

- 24 2. Defendant denies the allegations contained in Paragraph 2 of Plaintiffs' Complaint.
25 3. Defendant admits the allegations contained in Paragraph 3 of Plaintiffs' Complaint.

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Parties

4. Defendant is without sufficient knowledge or information with which to form a belief as to the truth of the allegations contained in Paragraph 4 of Plaintiffs' Complaint, and upon such basis denies said allegations.

5. Defendant admits the Carson Middle School is located at 1140 W. King Street and is without sufficient knowledge or information with which to form a belief as to the truth of the remaining allegations in Paragraph 5 of Plaintiffs' Complaint.

6. Defendant admits that he is a Carson City Deputy Sheriff and denies the remaining allegations in Paragraph 6 of Plaintiffs' Complaint.

7. Defendant denies the allegations contained in Paragraph 7 of Plaintiffs' Complaint.

Factual Allegations

8. Defendant is without sufficient knowledge or information with which to form a belief as to the truth of the allegations contained in Paragraphs 8, 9, 10, 11, 12, 13, 14, 16, and 20 of Plaintiffs' Complaint, and upon such basis denies said allegations.

9. Defendant denies the allegations contained in Paragraphs 15, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30 of Plaintiffs' Complaint.

10. Paragraph 17 contains citations to written statements attached as Exhibit 1 to the Complaint. Exhibit 1 speaks for itself.

First Cause of Action

11. In answer to Paragraph 31 of Plaintiffs' Complaint, Defendant repeats and realleges each and every answer to Paragraphs 1 through 30 as though fully set forth herein at length.

1 12. Defendant denies the allegations contained in Paragraphs 32, 33, 34, 35, 36, 37,
2 38, 38a, 38b, 38c, 39, 40 and 41 of Plaintiffs' Complaint.

3 **Second Cause of Action**

4 13. In answer to Paragraph 42 of Plaintiffs' Complaint, Defendant repeats and
5 realleges each and every answer to Paragraphs 1 through 41 as though fully set forth herein at
6 length.
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8 14. Defendant denies the allegations contained in Paragraphs 43, 44, 45, 46, 47, and
9 48 of Plaintiffs' Complaint.

10 **SECOND DEFENSE**

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12 Plaintiffs' Complaint on file herein fails to state a claim against Defendant upon which
13 relief can be granted.

14 **THIRD DEFENSE**

15 Based upon information and belief, Plaintiffs' may have failed to mitigate their damages.

16 **FOURTH DEFENSE**

17 Pursuant to NRS 41.141, in the event recovery is allowed against more than one
18 defendant in this action, then the liability of this answering Defendant, if any, shall be several to
19 the Plaintiffs only for that portion of the judgment which represents the percentage of negligence
20 attributable to this answering Defendant.

21 **FIFTH DEFENSE**

22 At all times and places alleged in Plaintiffs' Complaint, the negligence, misconduct, and
23 fault of Plaintiffs exceeds that of this answering Defendant, if any, and Plaintiffs are thereby
24 barred from any recovery against this Defendant.

25 **SIXTH DEFENSE**

26 All risks and dangers involved in the factual situation described in Plaintiffs' Complaint
27 were open, obvious, and known to Plaintiffs and Plaintiffs voluntarily assumed said risks and
28 dangers.

1 **SEVENTH DEFENSE**

2 It has been necessary for Defendant to employ the services of an attorney to defend this
3 action, and a reasonable sum should be allowed Defendant as and for attorney's fees, together
4 with its costs expended in this action.

5 **EIGHTH DEFENSE**

6 Defendant alleges that at all times and places alleged in the Complaint, Plaintiffs did not
7 exercise ordinary care, caution or prudence in the premises to avoid the loss herein complained
8 of, and that same was directly and proximately contributed to and caused by the negligence,
9 misconduct and fault of the Plaintiffs.

10 **NINTH DEFENSE**

11 The damages, if any, incurred by Plaintiffs are not attributable to any act, conduct, or
12 omission on the part of this Defendant; Defendant denies that they were negligent in any manner
13 or in any degree with respect to the matters set forth in Plaintiff's Complaint.

14 **TENTH DEFENSE**

15 Defendant's alleged actions or omissions were taken with due care in the execution of the
16 statutes and regulations, and, therefore, Defendant is statutorily immune from this action.

17 **ELEVENTH DEFENSE**

18 Defendant's alleged actions or omissions occurred in the exercise or performance of
19 discretionary functions and duties, and, therefore, Defendant is statutorily immune from this
20 action.

21 **TWELFTH DEFENSE**

22 An award of punitive damages against Defendant would be violative of the Fifth
23 Amendment of the United States Constitution in that there is no assurance against multiple,
24 unrestrained punishment in the form of punitive damages. Such an award of punitive damages
25 would be violative of the double jeopardy provisions of the Nevada Constitution, Art. I, §8.

26 **THIRTEENTH DEFENSE**

27 An award of punitive damages against Defendant would be violative of the due process
28 clause of the United States Constitution, the Fourteenth Amendment, §1, and violative of the due
process clause of the Nevada Constitution, Art. I, §8.

FOURTEENTH DEFENSE

An award of punitive damages against Defendant would constitute an undue burden upon interstate commerce and violate the interstate commerce clause of the United States Constitution, Art. I, §8.

FIFTEENTH DEFENSE

An award of punitive damages against Defendant would constitute an excessive fine violative of the Nevada Constitution, Art. I, §7.

SIXTEENTH DEFENSE

An award of punitive damages against Defendant should be barred since Plaintiffs cannot establish that Defendant had an "evil mind" and "conducted itself in an aggravated and outrageous manner."

SEVENTEENTH DEFENSE

The occurrence referred to in Plaintiffs' Complaint, and all damages, if any, arising therefrom, were caused by the acts or omissions of a third person or persons over whom this Defendant had no control.

EIGHTEENTH DEFENSE

Upon information and belief, Defendant alleges that Plaintiffs' causes of action as set forth in the Complaint are barred by the statute of limitations as contained in Chapter 11 of the Nevada Revised Statutes and those applicable to Plaintiffs' claims brought under 42 U.S.C. §1983.

NINETEENTH DEFENSE

The burden of proof on punitive damages should be by clear and convincing evidence.

TWENTIETH DEFENSE

Defendant is entitled to qualified good faith immunity.

TWENTY FIRST DEFENSE

To the extent Plaintiffs' complaint asserts state tort claims, his recovery is limited to the sum of \$100,000.00 by virtue of the provisions of Chapter 41 of the Nevada Revised Statutes.

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TWENTY SECOND DEFENSE

Probable cause existed for the detention/arrest of Plaintiff "JSB".

TWENTY THIRD DEFENSE

Punitive damages are not recoverable against this answering Defendant concerning any state tort claims asserted in Plaintiffs' complaint by virtue of the provisions of Chapter 41 of the Nevada Revised Statutes.

TWENTY FOURTH DEFENSE

No unlawful custom or policy exists in Carson City as alleged in Plaintiffs' Complaint.

TWENTY FIFTH DEFENSE

Plaintiffs are constrained from invoking equitable jurisdiction and an equitable remedy because Plaintiffs have not come before this Court with clean hands.

TWENTY-SIXTH DEFENSE

Plaintiffs are estopped from asserting any cause of action whatever against Defendant.

TWENTY-SEVENTH DEFENSE

Plaintiffs have waived and abandoned any and all claims as alleged herein against this Defendant by their acts and conduct.

TWENTY EIGHTH DEFENSE

The Defendant is entitled to absolute immunity from suit.

TWENTY-NINTH DEFENSE

Pursuant to FRCP Rule 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available to Defendant after reasonable

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1 inquiry upon the filing of Defendant's Answer, and therefore, Defendant reserves the right to
2 amend this Answer to allege additional affirmative defenses if subsequent investigation so
3 warrants.

4 DATED this 8th day of September, 2014.

5 THORNDAL ARMSTRONG
6 DELK BALKENBUSH & EISINGER

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